

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alex Tuminello	Team: Team # 3	CCRB Case #: 201309734	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/16/2013 11:00 PM	Location of Incident: 700 South Avenue, and the 121st Precinct stationhouse.	Precinct: 121	18 Mo. SOL 2/16/2015	EO SOL 2/16/2015	
Date/Time CV Reported Thu, 10/17/2013 8:43 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/17/2013 8:43 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Johnny Castillo	05895	948523	121 PCT
2. POM Michael Carr	01928	944415	121 PCT
3. LT James Trubus	00000	935866	121 PCT
4. POM Jose Alicea	00115	944315	121 PCT
5. SGT Dmitry Brushnivsky	01417	936251	121 PCT
6. An officer			121 PCT
7. POM Sean Haggerty	29907	945800	121 PCT
8. POM Alex Fernsmith	07310	934856	DB BSVS

Officer(s)	Allegation	Investigator Recommendation
A.POM Johnny Castillo	Force: At 700 South Avenue in Staten Island, PO Johnny Castillo used physical force against § 87(2)(b)	
B.POM Jose Alicea	Discourtesy: At 700 South Avenue in Staten Island, PO Jose Alicea spoke rudely to § 87(2)(b)	
C.POM Jose Alicea	Abuse: At 700 South Avenue in Staten Island, PO Jose Alicea threatened § 87(2)(b) with the use of force.	
D.POM Michael Carr	Force: At 700 South Avenue in Staten Island, PO Michael Carr used physical force against § 87(2)(b)	
E. An officer	Force: At 700 South Avenue in Staten Island, an officer used physical force against § 87(2)(b)	
F. An officer	Abuse: At 700 South Avenue in Staten Island, an officer searched the car in which § 87(2)(b) was an occupant.	
G.POM Johnny Castillo	Discourtesy: At the 121st Precinct stationhouse, PO Johnny Castillo spoke rudely to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)		

Case Summary

On October 17, 2013, § 87(2)(b) filed a complaint with the CCRB via telephone. § 87(2)(b) filed her complaint two months after the incident date because it was at that time that she learned about the CCRB.

On August 16, 2013, at approximately 11:00 p.m., § 87(2)(b) was approached by PO Johnny Castillo of the 121st Precinct. The following allegations resulted:

Allegation A: Force- At 700 South Avenue in Staten Island, PO Johnny Castillo used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation B: Abuse of Authority- At 700 South Avenue in Staten Island, PO Jose Alicea spoke rudely to § 87(2)(b)

Allegation C: Abuse of Authority- At 700 South Avenue in Staten Island, PO Jose Alicea threatened § 87(2)(b) with the use of force.

§ 87(2)(g)

Allegation D: Force- At 700 South Avenue in Staten Island, PO Michael Carr used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation E: Force- At 700 South Avenue in Staten Island, an officer used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation F: Abuse of Authority- At 700 South Avenue in Staten Island, an officer searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(g)

Allegation G: Discourtesy- At the 121st Precinct stationhouse, PO Johnny Castillo spoke rudely to § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

This case was originally assigned to Investigator Lesley Henry-Bedeau but was reassigned to Investigator Alex Tuminello on July 8, 2014. § 87(2)(b) was not offered mediation at the time of her CCRB statement because she was arrested in regards to the incident.

Results of the Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Statement

On November 6, 2013, § 87(2)(b) was interviewed by the CCRB (Encl. 9A-9I). Her statement is summarized below.

On August 16, 2013, at 11:30 p.m., § 87(2)(b) drove her silver 2013 Hyundai Sonata, NYS license plate § 87(2)(b), with passenger § 87(2)(b) seated in the front passenger seat in the vicinity of 700 South Avenue in Staten Island. At the corner of Goethals Road North and South Avenue, there had been an accident and an officer, identified by § 87(2)(b) as PO Johnny Castillo of the 121st Precinct, was directing traffic through the intersection. When § 87(2)(b)'s car reached the front of the procession of cars, PO Castillo waved his hand and indicated for § 87(2)(b) to drive forward through the green light. § 87(2)(b) drove straight with the left passenger side of her car passing closest to PO Castillo, with his hip facing the car. § 87(2)(b) did not come close to PO Castillo and did not nearly hit him. § 87(2)(b) did not speed past PO Castillo, but drove slowly into the Sunoco gas station located across the street on the corner at 700 South Avenue.

§ 87(2)(b) drove up to the minimart to pay with cash and use the restroom. § 87(2)(b) entered the minimart and heard someone shouting, "Hey." § 87(2)(b) turned and saw PO Castillo, but she did not recognize him as the same officer that had been directing traffic. PO Castillo told § 87(2)(b) that she nearly hit him with her car and she denied that that had occurred. PO Castillo repeated over and over that § 87(2)(b) had nearly hit him and she argued with him that she did not. § 87(2)(b) did not use any profanity and she was not screaming at that time. PO Castillo told § 87(2)(b) to go outside and provide her license and registration. PO Castillo did not indicate that § 87(2)(b) would be summonsed or arrested.

§ 87(2)(b) entered her car and removed her license from her wallet. § 87(2)(b) remained seated in the car and he was not addressed by PO Castillo, the only officer present at that time. PO Castillo told § 87(2)(b) that she appeared to be drunk for reasons unknown to her and she said that she was not. § 87(2)(b) provided PO Castillo with her license and at some point PO Castillo walked away and obtained a breathalyzer test. § 87(2)(b) stood outside of her car, took the breathalyzer test and blew zero. § 87(2)(b) sat back inside of her car and PO Castillo asked her several times to exit. § 87(2)(b) initially refused because she did not know why she should exit again after passing the breathalyzer test. PO Castillo did not indicate that she was going to be arrested. § 87(2)(b) exited and PO Castillo handcuffed her and immediately threw her to the ground. § 87(2)(b) hit the right side of her head underneath her hair on the concrete and suffered a concussion. PO Castillo held her down in the upper part of her back and compressed her chest making it difficult for her to breathe. § 87(2)(b) was held in that position for more than 10 minutes. § 87(2)(b) did not resist in any way. § 87(2)(b) screamed for § 87(2)(b) to call her father from her cell phone inside of the car.

§ 87(2)(b) did not hear PO Castillo call for back up. She observed police officers boots arriving from her position on the ground and then she was lifted to her feet. A uniformed officer, described as a white man, 6' tall, with a large build and glasses stood on her right hand and held her arm. This officer has been identified by the investigation as PO Jose Alicea of the 121st Precinct. § 87(2)(b) told PO Alicea that he was hurting her arm and he said, "I'll fucking break your arm," and held her tighter. § 87(2)(b) sustained bruises to her upper arms. An officer, whom she identified as PO Michael Carr of the 121st Precinct, and described as a black man, stood on her left on top of her exposed left foot in her sandals. § 87(2)(b) moved her foot from underneath PO Carr's boot and he said that he said not to move and then stomped on her left foot causing pain and abrasions.

Approximately 30 officers responded in multiple cars and there was a helicopter overhead. § 87(2)(b) did not know of any other reason why the officers were there and she was not accused of anything other than PO Castillo's accusation that she had almost hit him with her car. An officer, whom § 87(2)(b) did not see, pulled her to a patrol car and pushed her inside. As she was being placed in the patrol car, § 87(2)(b) hit her lip against the hood of the car and she burst her bottom lip. This officer was not identified by the investigation. A uniformed officer, described as a white man, 5'5" tall, with light colored eyes and hair, entered the driver's seat after § 87(2)(b) was put in the car. An officer whom § 87(2)(b) could not describe entered the passenger's seat. These officers were not identified by the investigation. § 87(2)(b) watched as an officer described as a white man searched the inside of her car and the trunk lining and her luggage. This officer was not identified by the investigation. PO Castillo later told § 87(2)(b) that he located a marijuana clip in the center console; she denied she had marijuana anywhere in her car.

§ 87(2)(b) was taken to a location with holding cells, but it was not the 121st Precinct stationhouse. § 87(2)(b) knows the 121st Precinct stationhouse because it was newly built, but she was not taken there. § 87(2)(b) was not asked if she was alone in the cells. PO Castillo spoke with a plainclothes officer whom § 87(2)(b) could not describe and said that she was a bitch and had almost hit him with her car. § 87(2)(b) overheard their conversation and said, "Excuse me," to which PO Castillo replied, "Sit the fuck down and shut up," and said repeatedly that she was going to Rikers Island.

§ 87(2)(b) felt pain all over her body and an EMS worker came to speak with her, but she was informed that she would be taken to the hospital as a prisoner and she declined treatment. PO Castillo took § 87(2)(b)'s photograph and fingerprints and then she was taken to Staten Island Central Booking. At Staten Island Central Booking, a court officer asked her why she was limping; § 87(2)(b) later learned that she sustained fractures to two of her toes on her right

foot, but she did not know when or how that occurred. § 87(2)(b) did not mention what happened to her vehicle after the incident.

Photo Array

On August 28, 2014, § 87(2)(b) arrived at the CCRB for a photo array appointment with her attorney present. (Encl. 10A).

§ 87(2)(b) was shown seven photographs during her photo array appointment. § 87(2)(b) stated that photograph number one of PO Michael Dicecoo was similar, however, she stated this was not the officer that she interacted with on the date of the incident.

§ 87(2)(b) stated that photograph number two most closely resembled the officer that stated to her, "I'll fucking break it," as he grabbed her right shoulder. Photograph number two shows PO Sean Haggerty. § 87(2)(b) stated that this officer has similar eye color and bone structure but she was not positive that it was definitely him. § 87(2)(b) did not positively identify PO Haggerty's partner PO Alex Fernsmith during the photo array.

§ 87(2)(b) also stated that the officer in photograph number six, which is Sgt. Dmitry Brushnivsky, looked similar to one of the officers that arrived at the incident location. She stated that the officer in the photograph had similar eyes but was not involved in the assault.

Witness: § 87(2)(b)

Phone Statement

On November 29, 2013, § 87(2)(b) provided a phone statement to the CCRB (Encl. 11A). § 87(2)(b) was scheduled for a CCRB appointment on March 17, 2014 but missed his appointment without calling ahead of time to cancel or reschedule. On the aforementioned date a missed appointment letter was mailed to § 87(2)(b) via the United States Postal Service and this letter was not returned to the CCRB. His phone statement is summarized below.

On August 16, 2013, § 87(2)(b) and § 87(2)(b) went out for drinks upon her return from a trip to Miami, Florida. § 87(2)(b) stated that he was with § 87(2)(b) for approximately one hour before the incident began and did not state what they drank or how much they drank. There had been an accident near the intersection at 700 South Street in Staten Island and an officer was directing traffic. The officer alleged that § 87(2)(b) drove past him too closely and he aggressively approached the car and § 87(2)(b) said that § 87(2)(b) went to use the bathroom. An officer and § 87(2)(b) returned to the car and he requested § 87(2)(b)'s license and registration. This officer has been identified by the investigation as PO Castillo. PO Castillo and § 87(2)(b) engaged in an argument and he asked whether she was on drugs or had been drinking alcohol and § 87(2)(b) said she was not under any influence.

§ 87(2)(b) was asked to exit and she refused. PO Castillo removed her from the car and then banged § 87(2)(b)'s body against the car and then to the ground to handcuff her. Numerous officers responded and § 87(2)(b) was kicking and screaming, "You're hurting my arm." An officer whom § 87(2)(b) did not see said, "I don't give a fuck, I'll break your arm." This officer was identified by the investigation as PO Alicea.

After § 87(2)(b) was handcuffed, § 87(2)(b) was removed from the car and questioned about whether § 87(2)(b) was on drugs. § 87(2)(b) admitted that they had gone out for drinks and that § 87(2)(b) had returned from a vacation that had gone bad. Approximately two to three officers, whom § 87(2)(b) could not see clearly, searched through § 87(2)(b)'s car and located medication in her suitcase in her trunk. § 87(2)(b) watched them search the car from approximately five feet away while he was being questioned. These officers were not identified by the investigation.

NYPD Statements

Subject Officer: PO JOHNNY CASTILLO

- § 87(2)(b)
- *On August 16, 2013, PO Castillo worked in uniform from 3 p.m. to 11:35 p.m. and then an overtime shift until 2:05 a.m. the following day. He was originally assigned to sector F and during his tour he was reassigned to traffic alone.*

Memo Book

On August 16, 2013, at approximately 11:10 p.m., § 87(2)(b) nearly struck PO Castillo and he was force to jump out of the way. § 87(2)(b) stopped at a nearby gas station and PO Castillo requested her information and smelled marijuana. § 87(2)(b) responded, "What the fuck?" § 87(2)(b) was asked to step out and place her hands behind her back and she resisted. § 87(2)(b) was taken to the ground and additional units were called. § 87(2)(b) refused to enter patrol car and sustained minor scrapes to arms and legs. § 87(2)(b) later admitted that she took Xanax medication and had smoked marijuana (Encl. 12A-12D).

Criminal Court Complaint Report § 87(2)(b)

At approximately 11:10 p.m., in front of 700 South Avenue in Staten Island, § 87(2)(b) was operating a 2013 silver Hyundai. § 87(2)(b) did drive her vehicle towards PO Castillo who was directing traffic on the street causing the officer to jump out of the way to prevent from being struck by § 87(2)(b). § 87(2)(b) did not comply with the orders and began to curse at PO Castillo when he tried to affect an arrest. § 87(2)(b) did resist by flailing her hands to prevent from being detained. During a search incident to lawful arrest, it was found that § 87(2)(b) had a marijuana cigarette in her vehicle (Encl. 13A-13B).

§ 87(2)(b)

CCRB Statement

On March 4, 2014, PO Castillo was interviewed at the CCRB (Encl. 15-15C). His testimony is summarized below.

On August 16, 2013, at 11:10 p.m., PO Castillo was directing traffic following an accident near 700 South Avenue in Staten Island. PO Castillo directed all traffic to make a left; however, § 87(2)(b) sped towards him, nearly hit him and drove past him and entered the gas station. PO Castillo followed § 87(2)(b) to the gas station and she was already in the store. PO Castillo approached and told § 87(2)(b) to get back into her car. PO Castillo intended to issue § 87(2)(b) a summons for reckless driving. PO Castillo advised § 87(2)(b) of the infraction, but he did not tell her he intended to summons her.

After § 87(2)(b) entered her car, PO Castillo asked her whether she observed him and she said, "Well, my light was green." PO Castillo smelled marijuana and § 87(2)(b) sounded groggy. PO Castillo asked § 87(2)(b) whether she had been drinking or smoking, but she was not given a breathalyzer until she was at the stationhouse.

PO Castillo told § 87(2)(b) to exit and she complied, but continuously asked why. PO Castillo sought to handcuff § 87(2)(b) and when she felt the handcuff on her wrist she pulled

away with one hand cuffed. PO Castillo took § 87(2)(b) to the ground to give himself an advantage. PO Castillo did not see any injury to § 87(2)(b) head and she never complained of a head injury. § 87(2)(b) sustained scrapes to her arms and legs. The passenger in the car, § 87(2)(b) attempted to exit and PO Castillo told him to get back in the car and he complied. PO Castillo called for backup because he was outnumbered.

PO Castillo placed his hand on § 87(2)(b)'s lower back but denied that he knelt on her back or restricted her breathing. PO Castillo held § 87(2)(b) down for approximately ten seconds. PO Castillo denied he or any other officer said, "I'll break your fucking arm," and he did not intentionally cause § 87(2)(b) pain by pulling her arm upward. Another police officer, PO Jose Alicea of the 121st Precinct, ran from the intersection where traffic was being conducted and assisted PO Castillo. PO Alicia grabbed her hands and handcuffed her. PO Castillo had gotten up and backed away from § 87(2)(b) at that point. When the rest of back up arrived, § 87(2)(b) was already handcuffed. PO Castillo did not see PO Carr step on § 87(2)(b)'s feet.

PO Castillo observed officers whom he did not know search the vehicle, including the trunk, because there was an odor of marijuana present. PO Castillo denied he participated in the search of any part of the vehicle. Lt. James Trabulsy of the 121st Precinct was present during the search. Marijuana was recovered from either the center console or ashtray by the "crime team." PO Castillo did not recall who informed him that marijuana had been recovered.

PO Castillo drove § 87(2)(b)'s car to the stationhouse. PO Castillo conducted an inventory search of the car at the 121st Precinct. PO Castillo denied he called § 87(2)(b) a "bitch" or said to her, "Sit the fuck down and shut the fuck up." At the courthouse, § 87(2)(b) informed PO Castillo that she had taken Xanax and smoked marijuana. The following day, § 87(2)(b) returned to the 121st Precinct with the brother and parents and she apologized for her behavior.

Subject Officer: LT. JAMES TRABULSY

- § 87(2)(b)
- *On August 16, 2013, Lt. Trabulsy worked in uniform from 2:45 p.m. to 11:30 p.m. He was assigned as the Platoon Commander for Patrol and was working alone inside of marked vehicle number 5685.*

Memo Book

Lt. Trabulsy did not have any related memo book entries regarding this incident. Lt. Trabulsy responded towards the end of the incident. At 8:35 p.m., he responded to § 87(2)(b) and at 11:30 p.m., he ended his tour (Encl. 16A-16C).

CCRB Statement

On April 8, 2014, Lt. Trabulsy was interviewed by the CCRB (Encl. 17A-17C). His statement was generally consistent with that of PO Castillo and is summarized below.

On August 16, 2013, at approximately 11 p.m., Lt. Trabulsy heard PO Castillo's request for additional police assistance as he conducted routine patrol nearly ten minutes away on the other side of Staten Island. Lt. Trabulsy arrived alone at 700 South Avenue and observed multiple officers on the scene. The only other supervisor present was Sgt. Dmitry Brushnivsky of the 121st Precinct. Lt. Trabulsy did not recall what Sgt. Brushnivsky had been doing at the incident location. § 87(2)(b) was handcuffed and seated inside of a patrol car from the 121st Precinct. Lt. Trabulsy did not see any physical force used to get § 87(2)(b) into handcuffs or place her inside of the patrol car. PO Castillo approached Lt. Trabulsy and informed him that § 87(2)(b)

§ 87(2)(b) nearly struck him with her car and that she was arrested and charged with driving under the influence, among other charges that Lt. Trabulsy did not recall. PO Castillo said that force had been used during § 87(2)(b)'s arrest, but he did not explicitly state what force was used. PO Castillo described § 87(2)(b) as having flailed her arms. Lt. Trabulsy did not recall whether PO Castillo said he believed § 87(2)(b) had smelled like marijuana or was under the influence of marijuana. PO Castillo informed Lt. Trabulsy that he found marijuana, but Lt. Trabulsy did not know where the marijuana had been recovered from or whether PO Castillo or another officer recovered it from § 87(2)(b) or her vehicle.

An inventory search would have been conducted of § 87(2)(b)'s car because the vehicle was taken to the 121st Precinct stationhouse. Lt. Trabulsy did not search the vehicle and he did not see any other officers search the vehicle at 700 South Avenue or the 121st Precinct stationhouse. Lt. Trabulsy did not search the interior or trunk of the vehicle and he did not search § 87(2)(b)'s luggage. Lt. Trabulsy said that he would have authorized for the vehicle to be searched, including the luggage, because, "It can pose a danger to the officers that were moving the car to the stationhouse, for instance, the luggage could contain a bomb." Lt. Trabulsy disputed that his decision to search the contents of a car during an inventory search would be influenced in any way by the behavior of the vehicle's owner.

Lt. Trabulsy did not speak with § 87(2)(b) but only glanced at her seated in the back of a patrol car. Lt. Trabulsy did not notice any injuries to § 87(2)(b) and she never complained of any injuries to Lt. Trabulsy. § 87(2)(b) screamed and kicked the window of the patrol car. Lt. Trabulsy did not see PO Carr at the incident location at all and he did not see him stomp on § 87(2)(b)'s foot or hit her face against the top of the patrol car. Lt. Trabulsy did not see which officer placed § 87(2)(b) inside of the patrol car and he did not recall which officers or how many were with her inside of the patrol car when he arrived. Lt. Trabulsy did not use any discourteous language towards § 87(2)(b) and he did not hear any officer state, "I'll break your fucking arm," or call § 87(2)(b) a bitch at any time, or say, "You looked fucked up." Lt. Trabulsy did not see § 87(2)(b) again after she was removed from 700 South Avenue.

Subject Officer: SGT. DMITRY BRUSHNIVSKY

- § 87(2)(b)
- *On August 16, 2013, Sgt. Brushnivsky was assigned as the desk officer inside of the 121st Precinct stationhouse. He worked in uniform from 2:50 p.m. to 11:47 p.m.*

§ 87(4-b), § 87(2)(g)

CCRB Statement

On May 8, 2014, Sgt. Brushnivsky was interviewed at the CCRB (Encl. 19A-19D). His testimony was generally consistent with that of the other officers and is summarized below.

On August 16, 2013, at approximately 11:30 p.m., Sgt. Brushnivsky was assigned to the desk of the stationhouse. He heard a call over the radio from PO Castillo, who requested assistance at 700 South Avenue in Staten Island. Sgt. Brushnivsky left the stationhouse with PO Carr and went immediately to the incident location. He did not state which officer remained at the desk.

Approximately two additional officers, one of whom was PO Castillo, were present when Sgt. Brushnivsky arrived. Sgt. Brushnivsky did not recall the second officer. § 87(2)(b) was present; however, Sgt. Brushnivsky did not recall her positioning or whether she was handcuffed.

Sgt. Brushnivsky did not interact with § 87(2)(b). Sgt. Brushnivsky did not see PO Castillo or PO Carr use any physical force against § 87(2)(b) and he did not hear PO Castillo use profanity. PO Castillo spoke with Sgt. Brushnivsky, but Sgt. Brushnivsky did not recall the details of their conversation.

Sgt. Brushnivsky did not recall whether § 87(2)(b)'s car was at the location and Sgt. Brushnivsky did not search the car or the trunk of the car, and he did not recall whether other officers searched the vehicle. Sgt. Brushnivsky was provided with details regarding what occurred between § 87(2)(b) and PO Castillo, but he did not recall the details of the incident. Sgt. Brushnivsky did not recall seeing a man seated in the vehicle.

Sgt. Brushnivsky did not push § 87(2)(b)'s face into a patrol car and he did not see any other officer do so. Sgt. Brushnivsky did not recall whether marijuana was located in § 87(2)(b)'s vehicle or by whom. Sgt. Brushnivsky did not recall seeing Lt. Trabulsky, aviation or an ESU unit at the location.

Subject Officer: PO MICHAEL CARR

- § 87(2)(b)
- *On August 16, 2013, PO Carr worked from 4 p.m. to midnight and was assigned to secure the scene of a dead on arrival. PO Carr worked in uniform and was assigned to marked vehicle alone.*

Memo Book

PO Carr's memo book entries indicate that at approximately 11:10 p.m., he responded to 700 South Avenue in Staten Island with Sgt. Brushnivsky (Encl. 20A-20D).

CCRB Statement

On March 4, 2014, PO Carr was interviewed at the CCRB (Encl. 21A-21C). His testimony was generally consistent with that of the other officers and is summarized below.

On August 16, 2013, at 11:10 p.m., PO Carr was at the stationhouse vouchering property of a deceased person. An officer requested additional police assistance at 700 South Avenue and PO Carr and Sgt. Brushnivsky responded. They arrived approximately five minutes after the call and § 87(2)(b) was handcuffed and on the ground. PO Carr did not recall how § 87(2)(b) was positioned. PO Carr did not see any officers physically engaged with § 87(2)(b).

There were between ten to fifteen officers present, one of whom was a highway officer. PO Carr approached the immediate scene to see if any officers needed assistance. PO Carr did not recall whether he stomped on § 87(2)(b)'s foot and he did not recall § 87(2)(b) complaining of pain to her foot. § 87(2)(b) argued with the officers and shouted profanities that he did not recall. PO Carr did not recall observing PO Castillo placing pressure on § 87(2)(b)'s back and he did not hear any officer say, "I'll break your fucking arm."

PO Carr escorted § 87(2)(b) to another unit's patrol car, but he did not recall specifically who transported her to the stationhouse. PO Carr did not recall whether he was alone or with another officer. § 87(2)(b) did not resist entering the patrol car and he denied that he pushed her face into the top of the patrol car. PO Carr did not recall whether she received any injuries and § 87(2)(b) did not complain of any injury to her lip. PO Carr did not see § 87(2)(b) after he placed her in the patrol car. PO Carr returned to the stationhouse, but he did not have any further interaction with § 87(2)(b). PO Carr did not see any other officers that were black men interact with § 87(2)(b).

Subject Officer: PO JOSE ALICEA

- § 87(2)(b)
- *On August 16, 2013, PO Alicea was assigned to patrol sectors E and H while in uniform. He was then reassigned to an accident location on foot.*

Memo Book

On August 16, 2013, at approximately 11 p.m., PO Alicea assisted PO Castillo with one arrest (Encl. 22A-22C).

CCRB Statement

On June 16, 2014, PO Alicea was interviewed at the CCRB. His testimony was generally consistent with that of the other officers and is summarized below (Encl. 23A-23E).

On August 16, 2013, PO Alicea was assigned to an accident location to direct traffic. PO Castillo was also present directing traffic at the intersection near 700 South Avenue in Staten Island. PO Castillo was nearly hit by a vehicle when the driver disobeyed PO Castillo's order to stop the car. The car drove into the gas station and stopped, and PO Castillo followed the car on foot. PO Alicea did not follow PO Castillo into the gas station, but continued to direct traffic and periodically watch what was occurring at the gas station and the driver, § 87(2)(b)

PO Castillo appeared to struggle with § 87(2)(b) who moved her arms around and refused to be handcuffed. PO Alicea walked over to assist PO Castillo and did so by holding § 87(2)(b)'s hands. § 87(2)(b) was eventually handcuffed on the ground, but PO Alicea did not recall how she ended up on the ground or whether she was in that position before or after he arrived. PO Alicea did not slam § 87(2)(b) to the ground or see PO Castillo slam her to the ground. PO Alicea did not see any injury on § 87(2)(b). PO Alicea did not kneel on § 87(2)(b)'s back and he did not see PO Castillo kneel on her back. PO Alicea did not tell § 87(2)(b) "I'll break your fucking arm," or hear that statement said by any other officer.

PO Alicea called for additional units because he had left the intersection with the accident vehicles unattended. Numerous officers, whom PO Alicea did not recall, arrived. PO Alicea did not recall which supervisor was present. PO Alicea did not see § 87(2)(b) placed in a patrol car and he did not slam her face into the top of the patrol car. PO Alicea left the incident location as back up arrived because he returned to the accident intersection to direct traffic and safeguard his own patrol car. PO Alicea did not search § 87(2)(b)'s vehicle or see any other officers search her vehicle. PO Alicea remained at 700 South Avenue and did not go to the stationhouse or Staten Island Central Booking with § 87(2)(b)

Subject Officer: PO SEAN HAGGERTY

- § 87(2)(g)
- *On August 16, 2013, PO Haggerty was working anti-crime with PO Alex Fernsmith and PO Vincent Agostino from 8:00 p.m. to 4:35 a.m. The officers were in plainclothes and were operating an unmarked black Chevy Impala.*

Memo Book

PO Haggerty did not have any memo book entries in regards to this incident. On August 16, 2013, at approximately 8:00 p.m., roll call with Sgt. Michael Dicecco. At midnight, vehicle stop at § 87(2)(b) (Encl. 24A-24C).

CCRB Statement

On September 3, 2014, PO Haggerty was interviewed at the CCRB. His testimony is summarized below (Encl. 25A-25E).

PO Haggerty stated that he was not present for an incident at 700 South Boulevard on August 16, 2013 at approximately 11 p.m. in Staten Island. PO Haggerty was also shown a CCRB photograph of § 87(2)(b) and stated that he never interacted with his individual on the date of the incident.

Subject Officer: PO ALEX FERNSMITH

- § 87(2)(b)
- *On August 16, 2013, PO Fernsmith worked from 9:00 p.m. on August 16, 2013 to 6:35 a.m. on August 17, 2013. He was working Anti-Crime with PO Sean Haggerty and the officers were dressed in plainclothes and were operating unmarked vehicle number 165*

Memo Book

PO Fernsmith did not have any memo book entries in regards to this incident. On August 16, 2013, at approximately 10:30 p.m., inspection of RMP #165. At approximately 11:30 p.m., one stopped at Goethals Road North and South Avenue (Encl. 25F-25H).

CCRB Statement

On October 22, 2014, PO Fernsmith was interviewed at the CCRB (Encl. 25I-25L). His testimony is summarized below.

On August 16, 2013, at approximately 11 p.m., PO Fernsmith stated that he and PO Haggerty received a call in regards to an officer needs assistance at 700 South Avenue. At the time, the officers were on routine patrol, approximately ten blocks from 700 South Avenue. PO Fernsmith stated that the call was put over the radio by PO Johnny Castillo and it sounded like he was out of breath and fighting someone. It took the officers a few minutes to respond to the location and upon arrival, PO Fernsmith observed an assortment of marked and unmarked vehicles at the location.

Both PO Fernsmith and PO Haggerty exited the vehicle and approached the location. According to PO Fernsmith, § 87(2)(b) was outside of her vehicle in handcuffs. He did not observe any injuries on § 87(2)(b) because he never got close to her. PO Fernsmith spoke with the passenger of § 87(2)(b)'s vehicle. This individual has been identified by the investigation as § 87(2)(b). PO Fernsmith had a conversation with § 87(2)(b) for a few minutes and he explained that he did not know why § 87(2)(b) was asking so crazy. PO Fernsmith stated that this was a normal conversation. No other actions were taken by PO Fernsmith at the location. He was also unsure what actions PO Haggerty took at the location.

PO Fernsmith did not observe any injuries on officers while he was at the location. He also stated that no information was relayed to him in regards to why § 87(2)(b) was arrested. PO Fernsmith saw PO Castillo at the location but he did not speak to him. He was also unsure as to whether or not § 87(2)(b) was intoxicated or under the influence of any drugs. PO Fernsmith did not observe any officers use physical force against § 87(2)(b) he did not hear an officer state, "I'll fucking break your arm" and stated that § 87(2)(b)'s vehicle was searched after she was placed under arrest. PO Fernsmith stated that he did not see which officer searched the vehicle. PO Fernsmith stated that he was at the scene for 10 minutes before he and PO Haggerty went back on patrol.

Medical Records

§ 87(2)(b)

§ 87(2)(b) received treatment on § 87(2)(b), at approximately 6:50 p.m. § 87(2)(b) complained of injuries to her head, neck, back/hips, wrists and right foot after an alleged assault by the police 2 days prior.

An examination showed that there was no sign of dislocation or fracture in her wrists or pelvis, and a brain CAT scan produced normal results. § 87(2)(b) was diagnosed with a concussion without loss of consciousness, contusion to her right 3rd toe with fracture, contusion to her right 4th toe with fracture, acute cervical strain, left hip contusion, right hip contusion and acute back pain. The medical records do not note any lacerations to § 87(2)(b)'s lip.

§ 87(2)(b) was prescribed 5 milligrams of Flexeril, 600 milligrams of Motrin and 500 milligrams of Vicodin. § 87(2)(b) was discharged to home (Encl. Medical Records).

§ 87(2)(b)

§ 87(2)(b) sought physical therapy on § 87(2)(b), she was diagnosed with traumatic cervical segmental dysfunction and radiculopathy (pinched nerve in lower back) and traumatic lumbar dysfunction and radiculopathy (acute and chronic lower back pain). § 87(2)(b) was treated with chiropractic care twice a week for four weeks. On § 87(2)(b), the medical records note a slight improvement in range of motion in neck and degree of pain in lower back. On § 87(2)(b), there was an increase in severity of lower back pain noted (Encl. Medical Records).

NYPD Documents

Event Information § 87(2)(b)

The report indicates that on August 16, 2013, at approximately 11:17 p.m., in the vicinity of the Staten Island Expressway and Glen Street, there was a pick-up of an arrest and one female was placed in a vehicle and transported to 120th Precinct stationhouse (Encl. 26A-26H).

Roll Call

The roll call dates August 16, 2013, for tour 3 indicates that Lt. Trabulsy was assigned as the platoon commander and Sgt. Brushnivsky was assigned as the desk officer (Encl. 27A-27B).

Property Voucher

The property voucher filled out for § 87(2)(b) on August 17, 2013, indicates that a black remote car key was vouchered for safe keeping by PO Castillo. On August 17, 2013, at approximately 2:19 p.m., the car key was returned to § 87(2)(b). There is not a record of marijuana being vouchered in connection with § 87(2)(b)'s arrest (Encl. 28A-28B).

Arrest for Incident and Disposition

- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

- On August 26, 2014, the undersigned investigator contacted the Staten Island Criminal Court in regards to the disposition of the charge against § 87(2)(b). There is no public record of the case against § 87(2)(b).

Status of Civil Proceedings

- On August 21, 2014, a notice of claim inquiry to the NYC Comptroller's Office. § 87(2)(b) has filed a lawsuit against PO Castillo and is seeking compensatory damages in an amount to be determined at trial, punitive damages in an amount to be determined at trial, reasonable attorney fees and costs under 42 U.S.C. 1998; and directing such other and further relief as the Court may deem just and proper, together with attorneys' fees, interest, costs and disbursements of this action (Encl. 30A-30L).

Civilian Criminal History

- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

Civilian CCRB History

- § 87(2)(b)

Subject Officer(s) CCRB History

- PO Castillo has been a member of the NYPD for 4 years and there are no substantiated CCRB allegations against him (Encl. 3A-3B).
- PO Carr has been a member of the NYPD for 7 years and there are no substantiated CCRB allegations against him (Encl. 4A).
- PO Alicea has been a member of the NYPD for 7 years and this is the first CCRB complaint filed against him (Encl. 4B).
- Lt. Trabulsky has been a member of the NYPD for 10 years and there are no substantiated CCRB allegations against him (Encl. 5A).
- Sgt. Brushnivsky has been a member of the NYPD for 9 years and there are no substantiated allegations against him (Encl. 6A).
- PO Haggerty has been a member of the NYPD for 6 years and there are no substantiated CCRB allegations against him (Encl. 6B).
- PO Fernsmith has been a member of the NYPD for 10 years and there are no substantiated CCRB allegations against him (Encl. 6C).

Conclusion

Identification of Subject Officers

§ 87(2)(b) alleged that PO Castillo handcuffed her outside of her vehicle and immediately threw her to the ground. PO Castillo acknowledged this interaction and stated she was taken to the ground upon resisting. § 87(2)(b) also alleged that PO Castillo spoke rudely to her at Staten Island Central Booking. Therefore, Allegations A and G are being pleaded against PO Castillo. § 87(2)(b) also alleged that PO Michael Carr specifically stomped on her left foot after being placed in handcuffs. Therefore Allegation D is being pled against PO Carr.

Allegation B: Abuse of Authority- At 700 South Avenue in Staten Island, PO Jose Alicea spoke rudely to § 87(2)(b)

Allegation C: Abuse of Authority- At 700 South Avenue in Staten Island, PO Jose Alicea threatened § 87(2)(b) with the use of force.

According to § 87(2)(b) while she was being apprehended, an officer began to grab her arm. § 87(2)(b) complained that the officer was hurting her and he replied, "I'll fucking break your arm." During his phone statement, § 87(2)(b) provided the following information. He stated that while § 87(2)(b) was being placed under arrest, she stated to the officers, "You're hurting my arm." An officer then replied, "I don't give a fuck, I'll break your arm." However, § 87(2)(b) was unable to see who this officer was.

PO Alicea stated that he walked over to assist PO Castillo with the arrest of § 87(2)(b). PO Alicea stated that he did not tell § 87(2)(b) "I'll break your fucking arm," or hear that statement made by any other officer. All of the officers interviewed in regards to the investigation stated that they did not hear an officer make the aforementioned statement to § 87(2)(b).

Patrol Guide Procedure 2013-10 (Encl. 1BB-1CC) explicitly states that all members of the service are prohibited from using discourteous or disrespectful remarks. According to *NYPD v. Briscoe*, OATH Index No. 1328/00 (Sept. 29, 2000) (Encl. 1C-1AA), an implied threat represents a gratuitous comment which serves no purpose other than to intimidate. This constitutes an abuse of the respondent's authority as a police officer.

§ 87(2)(g)

Allegation D: Force- At 700 South Avenue in Staten Island, PO Michael Carr used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Carr stomped on her left foot after she was placed in handcuffs. PO Carr did not recall whether he stomped on § 87(2)(b)'s foot, but did not specifically deny that the action occurred. PO Carr stated that § 87(2)(b) was already in handcuffed on the ground by the time he arrived. None of the officers interviewed observed PO Carr stomp on § 87(2)(b)'s foot. § 87(2)(b) suffered abrasions on both of her feet and fractured toes on her right foot but did not specifically recall how the injuries to her right foot occurred. § 87(2)(b) stated that § 87(2)(b) had kicked her feet at the time she was being placed in handcuffs. Lt. Trabulsy stated that § 87(2)(b) screamed and kicked the window of the patrol car once placed inside.

§ 87(2)(g)

Allegation E: Force- At 700 South Avenue in Staten Island, An officer used physical force against § 87(2)(b)

§ 87(2)(b) alleged that an officer, whom she did not see, pulled her to a patrol car and pushed her inside. As she was being placed in the patrol car, § 87(2)(b) hit her lip against the hood of the car and she burst her bottom lip.

§ 87(2)(g). First, § 87(2)(b) stated that he and § 87(2)(b) were out for drinks approximately an hour before the incident began. PO Castillo also stated that § 87(2)(b) admitted to him that she had been smoking marijuana. Second, § 87(2)(b)'s medical records from § 87(2)(b) do not document any injuries to § 87(2)(b)'s lip. Third, § 87(2)(b)'s arrest photograph does not show any injuries to her lip.

§ 87(2)(g)

Allegation F: Abuse of Authority- At 700 South Avenue in Staten Island, an officer searched the car in which § 87(2)(b) was an occupant.

According to § 87(2)(b) upon being placed in a patrol vehicle, she observed an officer search the inside of her car, the trunk lining and her luggage.

§ 87(2)(g)

Allegation G: Discourtesy- At the 121st Precinct stationhouse, PO Johnny Castillo spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that while near the holding cells, PO Castillo began to speak with a plain-clothed officer that she could not describe. She stated that she overheard PO Castillo state to the officer that § 87(2)(b) was a bitch and had almost hit him with her car. § 87(2)(b) then stated, "Excuse me" to which PO Castillo replied, "Sit the fuck down and shut up." PO Castillo denied he called § 87(2)(b) a "bitch" or said to her, "Sit the fuck down and shut the fuck up."

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

[illegible]

Reviewer: _____
 Title/Signature Print Date